

Submission on *Consultation on regulations for the Incorporated Societies Act 2022*

Your name and organisation

Name	[REDACTED]
Organisation (if applicable)	[REDACTED]
Contact details	[REDACTED] [REDACTED] [REDACTED]

Responses to questions

Part 2 of the discussion document: section 254

Matter	Question
<p><i>Prescribing information that must be included or provided</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(a)?</p> <p>Referring to Table on pp11-12: 9(a): MBIE proposes the application should include <i>each officer's contact address (which can be but need not be their residential address), and email address.</i></p> <p>This does not align with section 5(2) of the Act which states: <i>A requirement under this Act to provide the contact details of a person is a requirement to provide at least— a physical or [NOT BOTH] an electronic address used by the person; and a telephone number that is used by the person.</i></p> <p>9(a) MBIE proposes requiring certification that <i>a majority of the members of the proposed society have consented to the application.</i> Can an as-yet unestablished entity actually have members that can be identified and quantified?</p> <p>109(2): For small volunteer-led societies there is overkill in the amount of information required in the annual return. Contact details of the society's designated contact person should suffice, along with names of all officers. MHRS recommends that, for small societies at least, the following requirement be deleted: <i>the names and physical addresses of the society's officers, noting that the physical address need not be their residential address.</i></p> <p>If this requirement remains, we consider the information should be the officers' contact details as per 5(s) of the Act.</p> <p>Sch3 cl (3)(b): the same comment on contact details as for 9(a) above.</p>
<p><i>Prescribing the manner in which things must be done</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(b)?</p> <p>177(2)(b) and 186(2): no manner is stipulated for how the society itself is to be notified - by letter, email etc? Is notification to be made solely to the contact person or to others?</p> <p>11.3: Is consent in writing to be provided only to the new organisation or also to the Registrar? Is there to be any public notification, to alleviate potential confusion caused by the similarity of names?</p>
<p><i>Authorising the Registrar to determine the manner in which things must be done</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(c)?</p>

	MHRS concurs with this proposal.	
	<i>Declaring persons to be, or not to be, officers</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(d)?
	MHRS concurs with this approach.	
	<i>Prescribing circumstances related to independent committee members</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(e)?
	<p>52.1: As for comments above on 109(2), there is overkill in the proposed requirement to notify the Registrar of any change in every officer's contact details including physical and email addresses. For small societies with only voluntary resources this represents an onerous obligation and risk of infringement penalty if not met in every case.</p> <p>The proposed requirement to notify of any change of status, such as resignation etc, is appropriate. However MHRS sees no need for the Registrar to hold contact details of every officer. This level of bureaucracy risks deterring community members from undertaking officer roles on a voluntary basis.</p>	
	<i>Prescribing jurisdictions whose officer disqualifications we will recognise</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(f)?
	<i>Prescribing the types of changes in officer information that must be notified</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(g)?
	<i>Regulating constitutional provisions on conflicts of interest</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(h)?

<p><i>Prescribing societies that can restrict general meeting attendance to delegates</i></p>	<p>Do you have any suggestions regarding regulations that should be made under section 254(1)(i)?</p>
<p><i>Defining the term 'total current assets'</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(j)?</p>
<p><i>Prescribing additional requirements for the financial statements of small societies</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(k)?</p>
<p>MHRS concurs with this proposal.</p>	
<p><i>Determining the class of society that must have its financial statements audited</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(l)? For example, do you agree that focusing on the proportion of societies that should be captured is appropriate?</p>
<p>MHRS concurs with this approach.</p>	
<p><i>Setting infringement fees</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(m)?</p>

	<p>Financial penalties for failure to follow required procedures may in some cases be warranted. For small societies such as MHRS, however, the level of ‘fees’ proposed in para 113 is excessive.</p> <p>Like other volunteer-led community-societies, MHRS derives regular income only from annual membership fees. Occasionally it receives donations.</p> <p>In 2022 MHRS’s total income was \$425; for 2121 membership income of \$615 was supplemented by a one-off donation of \$8625, totalling \$9,240.</p> <p>A \$500 penalty would represent over one hundred percent of MHRS’s 2022 annual income. Even \$100 would be highly disproportionate to the income base of many small organisations and therefore disproportionately punitive, compared with entities with greater financial resources. There should be differentiation in the level of penalty for community-based membership organisations with low income and little or no other assets.</p> <p>Para 116 refers to the proposed fee of \$200 for failure to send notification of a passed resolution in lieu of a meeting; and for failure to notify the Registrar of the change of contact person details.</p> <p>We concur with the explanation in para 116 for the seriousness of the first infringement. \$200 may be a reasonable penalty, noting the Registrar has discretion for enforcement. However we argue it is too punitive for small entities, for the reason outlined above.</p> <p>We consider failure to notify changed details of contact person to be a less serious matter (para 116 offers no clarification on its seriousness). The Act requires a raft of other contact details for other officers and the society itself. A \$200 penalty would be highly punitive for small community-based organisations unlikely to attract much attention from the Registrar or other officials. For small societies a \$20 - \$50 penalty would be a sufficient deterrent, if considered necessary at all.</p>
<p><i>Prescribing the information to be included in infringement and reminder notices</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(n)?</p>
	<p>Annex One refers to Sec 160(2) as the basis for invoking the infringement penalty, without quoting the clause in full. In fact the whole of Sec 160 should be cited fully, as a helpful reference for small volunteer-led entities and others unfamiliar with legislative language or with accessing legislation for reference purposes.</p> <p>Sec 164(a) states an infringement notice must contain - <i>details of the alleged infringement offence that fairly inform the society of the time, place, and nature of the alleged offence</i>. However the Annex One draft focuses only on the last detail -nature of the alleged offence - with no reference to the preceding information required under 164(a).</p>
<p><i>Removal and restoration of societies from the register</i></p>	<p>Do you have any comments on MBIE’s proposals regarding regulations under section 254(1)(o)?</p>

<p><i>Prescribing certain matters relating to surplus assets</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(p)?</p>
<p><i>Prescribing procedural requirements for surplus asset 'resolutions'</i></p>	<p>Do you agree with MBIE's proposal that no regulations should be made at this stage under section 254(1)(q)?</p> <p>MHRS concurs with this proposal.</p>
<p><i>Prescribing how documents must be served on a society</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(r)?</p> <p>Para 138 (<i>Service in legal proceedings</i>): MHRS does not support option b (leaving with an officer of the society). Not stipulating which officer involves inherent risks of the material not reaching the appropriate recipient. Legal documents should be delivered by prior arrangement to the society's contact person or another officer designated by the contact person, also by prior arrangement with that officer.</p> <p>Nor do we support option (d) (<i>leaving it at the society's registered office or address for service</i>). This risks loss, misplacement or overlooking of the documents. Registered offices will in many cases be private addresses with little security. Many incorporated societies will have neither a workplace, not any employees.</p> <p>Para 140: In most cases we recommend use of email, or mail in cases where email is impractical or not user-friendly for the recipient, for example substantial documents that may require to be printed.</p> <p>For option (d) the email should be addressed to an actual person (normally the contact person) rather than a generic email address such as 'info@.....'</p>
<p><i>Prescribing how documents must be served on a person</i></p>	<p>Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(s)?</p> <p>Para 150: Legal proceedings targeting an individual officer should be served only under option (a) or (e - <i>by prior arrangement</i>). This should not be administratively difficult as the Act requires societies to provide full contact details of all officers. Many officers will be volunteers and may be overseas, in hospital or other situations where they are unaware of documents served without their prior knowledge.</p>

	Para 152: Same comments as for 140 above.
<i>Prescribing matters relating to the incorporated societies register</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(t)?
<i>Specifying matters concerning conversion into an incorporated society</i>	Do you have any comments on MBIE's proposals regarding regulations under section 254(1)(u), (v) or (w)?

Part 3 of the discussion document: section 254

Matter	Question
<i>Setting fees for the performance of functions or the exercise of powers</i>	Do you have any suggestions on regulations that should be made under section 255(1)(a)?
	In line with comments above for setting of infringement fees, there should be a differentiation in the amount of fees for large societies with substantial finances and small community-based membership organisations with limited financial resources. A one-size approach risks being inequitable and punitive.
<i>Setting late fees</i>	Do you have any comments on MBIE's proposals regarding regulations under section 255(1)(b)?
	Para 183: MHRS considers double penalties (late fee and infringement fee) would be unreasonably punitive. A late fee will be a sufficient deterrent.
<i>Setting other fees</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 255(1)(c)?

MHRS concurs with the proposal.

Part 4 of the discussion document: section 254

Matter	Question
<i>Providing that certain rules apply</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(a)?
MHRS concurs	
<i>Providing that certain legislative rules do not apply</i>	Do you agree with MBIE's proposal that no regulations should be made at this stage under section 256(1)(b)?
MHRS concurs	
<i>Prescribing matters for the purposes of Part 1 of Schedule 1</i>	Do you have any comments on MBIE's proposals regarding regulations under section 256(1)(c)?
MHRS considers costs of obligatory re-registration should not be borne by societies. Such costs should be met through budgeted allocations to MBIE baselines for the period concerned.	

Other comments